* **HIGH COURT OF DELHI : NEW DELHI**

\+ **W.P. (C) No. 5047/2003**

DATE OF DECISION : 16th August 2007

Kamal Nayan & Anr. ..... Petitioners
Through: Mr. Jasbir Singh Malik with
Ms. Rafat Ara, Advocate.

versus

Union of India & Others ..... Respondents
Through: Mr. Barkha Babbar, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?

2. To be referred to Reporter or not?

3. Whether the judgment should be reported in the Digest?

O R D E R
16.08.2007

A.K. SIKRI, J. (Oral)

1. The Petitioners were registered with Employment Exchange (Technical), Pusa, New Delhi. CPWD initiated process of selection and appointments in a post of Khalasi (Electrical) for which

requisition was sent to the Employment Exchange. On 20th October 1994, a selection committee was constituted which interviewed all those candidates, who were sponsered by the Employment Exchange. On the basis of the said interviews, a select list of 84 candidates in the general category was prepared. In the requisition sent to the Employment Exchange, the number of vacancies invited in the general category were 84. Both these Petitioners found their name for the said select list at S.No. 56 and 73 respectively. On the basis of the said select list CPWD started giving appointments in the year 1994 itself.

2. However, thereafter, no further appointments were given. In these circumstances, the Petitioners filed O.A. 333/1997 before the Tribunal. In this O.A. the Respondent informed the Tribunal that no further appointments were made as some discrepancies in the selection process were noticed and matter was referred to Vigilance and the said vigilance inquiry was under way to find out the actual position. It was also stated before the Tribunal that Respondent would not have objection to offer appointment to the remaining candidates in the select list, in case some vacancies become available as a result of the decision of the vigilance inquiry. On the basis of this statement, O.A. was disposed of vide orders dated 13.11.1997 directing that Respondent shall pass an appropriate order as and when the next

vacancy becomes available, and as and when the vigilance inquiry is finalized. It was further directed that in case subsequent vacancies become available to accommodate the applicants or the other similarly placed candidates on the same panel, appointment would be from the date when vacancy arose and the remaining benefits will be in accordance with the Rules.

3. The Petitioners filed Civil Writ Petition against this order in this court in which order dated 7.5.2001 were passed granting leave and liberty to the Petitioner to take recourse and remedy in appropriate proceedings in accordance with law. As the Petitioners were still not offered any appointment, in the year 2002 in O.A. No.48/2002 was filed seeking directions to the Respondents to appoint the Petitioners to the aforesaid post giving the benefit of seniority and consequential benefits as well. This petition has been dismissed by the Tribunal vide impugned order dated 15.11.2002. Operative portion of the order reads as under:

> "4. It is not in dispute that the select list came under the gaze of vigilance. The inquiry has since been finalised and the respondents have decided to cancel the select list. Under such a situation, there can be no occasion to consider the applicants or any other persons on the select list for any further appointment. In fact, the appointments already made will also be subject to the consequences of the vigilance inquiry.

> 5. Since the select list itself is being cancelled, there is no ground made out for allowing this O.A. The same is dismissed but with no order as to costs."

4. Feeling aggrieved, present petition has been filed.

5. The contention of the learned Counsel for the Petitioner is that if as a result of vigilance inquiry, it was decided by the Respondents to scrap the select list, it was not open to the Respondent not to distribute the 53 appointments already made. The submission thus was that in such an eventualities, these 53 appointments should also have been cancelled. Else, the respondents could not discriminate and deny appointment to the petitioners. It was also submitted that on the one hand stand taken is that the Respondent decided not to give appointment to remaining persons within the said select list but still one candidate belonging to ST category was given appointment even subsequently thereto. He referred to order dated December 6, 2005, passed in this Writ Petition wherein the aforesaid submissions of the learned Counsel for the Petitioner were recorded and the Respondents were directed to produce the entire record connected with the aforesaid selection and appointments.

6. After that order was passed, the Respondents filed additional affidavit dated 23.1.2006. In this affidavit, it is explained that some irregularities came to the notice of the Respondents in the

selection process and which led to vigilance inquiry. In these circumstances an office memorandum dated 30.12.1994 was issued directing the S.E. (Coordination) not to issue appointment letters to any one for the post of Khalasi till clearance from the Directorate. It is also explained that the Deputy Director (Admn) vide office memorandum dated 5.5.1990 has asked the S.E. (Coordination) Electrical to provide certain information and also directed him to ensure that henceforth no regularisation of workers engaged after the ban on 9.1.1985 either in the work charged establishment or on regular classified category is done, without prior permission from the Directorate.

7. In order to understand as to why the appointment already made were not disturbed even when certain irregularities were found in the vigilance inquiry, we will have to take note of the nature of these irregularities. In fact, what came to the notice of the Respondent from the enquiry was that S.E. (Electrical) had under-reported the vacancies of Khalasi against direct recruit quota, regularized 35 daily rated workers against direct recruit quota without obtaining necessary exemption from Employment Exchange and without seeking required clearance from the directorate General Work CPWD, even when there was ban on the appointments. It is the last irregularity with which we are concerned in the present case.

8. Vide office order dated 19.1.1985, Government had placed ban on further recruitments. It was found that in spite of this ban being in operation, the S.E. (Coordination) Electrical in CPWD had initiated the process of selection and it is pursuant to this that the select list was prepared in which the names of the Petitioners were included. When it came to the notice of the Respondent, and as there was a ban on the recruitment, the Respondent decided not to make any further appointments from the said select list and to scrap the same. In so far as the selection process is concerned, there was no complaint otherwise regarding the said selection process or the preparation of penal in the year 1994. It is for this reason, the Respondents decided not to cancel the appointments of 53 persons who had already been appointed in the year 1994 and who were working. If the Petitioners are not given appointments for this reason and the Respondents decided not to undo the appointments already made, we see rationale behind such a decision of the Respondents.

9. When there was a ban against further recruitments, petitioner cannot as a matter of right claim appointment on the basis of the said select list. It is settled law that mere selection does not give the right to a candidate for appointment. When the selection process is scrapped for valid reasons and there is no unfairness of the action of

the Respondent, we would not like to interfere with this decision in exercise of our powers of judicial review under Article 226 of the Constitution of India.

10. One person who has been given appointment even thereafter belongs to SC/ST category and the ban does not extend to the persons who belong to SC/ST category. Moreover, his appointment was in the wake of the orders dated 31.10.1997 passed by the National Commission of SC & ST of India.

11. We may also note that the select list was prepared in 1994. 13 years have passed since then. It would not be even otherwise desirable or proper to issue a mandamus at this stage to give appointment to the Petitioners after a lapse of 13 years.

12. Consequently, we do not find any infirmity in the order of the Tribunal. This petition stands dismissed.

A.K.SIKRI, J.

VIPIN SANGHI, J.

August 16, 2007
P.K. BABBAR